

**REMARKS**

Claims 1-9 remain pending in the application, claims 10-18 and 21-25 having been previously canceled in response to a restriction requirement and claims 19 and 20 being canceled herein.

**Title**

The Examiner objected to the title as allegedly being non-descriptive to what is being claimed.

The Applicants' title is amended herein to recite a more descriptive title. The Applicants respectfully request that the objection to the titled be withdrawn.

**35 USC 101 Rejection of Claims 1-9, 19 and 20**

Claims 19 and 20 are canceled herein, thereby mooting the rejection.

The Office Action alleged that claims 1-9 are directed toward non-statutory subject matter as being directed to "software or program per se". The Applicants respectfully disagree.

The Examiner is respectfully directed toward the recent Federal Circuit decision of *In re Bilski*, 88 USPQ2d 1385 (Fed. Cir. Oct. 30, 2008). The *Bilski* majority characterizes its machine-transformation test as "the governing test for determining patent eligibility of a process under section 101." Under this test, a claim is patent-eligible if (and as applied in *Bilski* apparently only if): (1) it is tied to a particular machine or apparatus, or (2) it transforms a particular article into a different state or thing." As explained by the Court, the test serves as a proxy for assessing the more fundamental concern – ensuring that the claim does not seek to impermissibly "preempt the use of a fundamental principle." Applying *Bilski* to the instant case, claims 1-9 are tied to the particular machine or apparatus of the claimed "first server", a "second server", and a "client device". See also *In re Comiskey*, 499 F.3d 1365, 84 USPQ2d 1670

Applicants respectfully request that the 35 USC 101 rejection of claims 1-9 be withdrawn.

**Indefiniteness of claims 1-9, 19 and 20 under 2<sup>nd</sup> paragraph of 35 U.S.C. §112**

The Office Action rejected claims 1-9, 19 and 20 as allegedly being indefinite under 35 USC 112. Claims 19 and 20 are canceled herein, thereby mooted the rejection of those claims.

The Office Action alleged that claim 3's "said determination of said third server" lacks antecedent basis. Claim 3 has been carefully reviewed and amended where appropriate.

The Office Action alleged that claim 1, at lines 3 and 4, is unclear. Claim 1 is amended herein as suggested by the Examiner.

All of the Examiner rejections of claims 1-9 have been addressed. The Applicants respectfully request that the 35 USC 2<sup>nd</sup> paragraph rejection of claim 1-9 be withdrawn.

**Claims 1-9, 19 and 20 over Andrews**

In the Office Action, claims 1-9, 19 and 20 were rejected under 35 U.S.C. §102(e) as allegedly being anticipated by U.S. Patent Application Pub. No. 2002/0038360 to Andrews et al. ("Andrews") and/or U.S. Patent No. 7,020,698 to Andrews et al. ("Andrews Patent"). Claims 19 and 20 are canceled herein, thereby mooted the rejection of those claims. With respect to claims 1-9, the Applicants respectfully traverse the rejection.

Andrews and Andrews Patent appear to contain the same disclosure, with Andrews Patent being the issued patent of the published Andrews application. To avoid redundancy and be consistent with the Examiner's rejection that references Andrews, Applicants herein reference Andrews.

Claims 1-9 recite, *inter alia*, **determining** at a first server a **location of a second server within a distributed environment storing** at least one of an

application program and data associated with a request for at least one of the application program and the data from a client device. The Examiner alleged that Andrews disclosed such features in paragraph [0032]. (see Office Action, page 4) The Applicants respectfully disagree.

Andrews at paragraph [0032] teaches:

[0032] It is assumed that clients make domain name (DNS) requests to local DN servers. FIG. 1 shows a local DN server 54 receiving a DNS request from a client 52. The local DN server 54 is shown forwarding the client request to a redirection server 56. The redirection server 56 responds to the client request by returning to the client 52 the IP address of a content server 54a-e in the network determined to be a preferred content server.

To summarize, Andrews' DNS server receives a domain name request from a client. The DNS server forwards the domain name request to a redirection server. The redirection server returns to the client the domain name requested.

Andrews forwards ALL domain name requests to the same second server. Forwarding of ALL domain name requests to a same server obviates the need to determine a location of a second server, as recited by claims 1-9.

The inventors of this application appreciated that conventionally a request for a program and/or data from a first server that does not store the requested program and/or data fails. Failure of a request is very frustrating to a user of a client device. The user must then attempt to take further action to determine the location of a server that is able to service a request for a program and/or data. Many inexperienced users may not be able to determine a location of a server that is able to service their request, leaving them completely without solution. Applicants' claims overcome such deficiencies in the art. In accordance with the claimed features, a first server determines the location of a second server that is able to service the request, eliminating the otherwise conventional frustration a user of a client device might otherwise experience.

Accordingly, for at least all the above reasons, claims 1-9 are patentable over the prior art of record. It is therefore respectfully requested that the rejection be withdrawn.

**Conclusion**

All objections and/or rejections having been addressed, it is respectfully submitted that the subject application is in condition for allowance and a Notice to that effect is earnestly solicited.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'W.H. Bollman', is written over a horizontal line.

William H. Bollman

Reg. No.: 36,457

Tel. (202) 261-1020

Fax. (202) 887-0336

**MANELLI DENISON & SELTER PLLC**

2000 M Street, NW 7<sup>TH</sup> Floor

Washington, DC 20036-3307

TEL. (202) 261-1020

FAX. (202) 887-0336

WHB/df